

**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
UNIVERSITY OF SOUTHERN INDIANA**

Sergio Campos v. State of Indiana

Appeal from:
Lake Superior Court

The Honorable Salvador
Vasquez, Judge

Oral Argument:
Thursday, March 29, 2007
2:00—3:00 p.m. CT
30 minutes each side

In this interlocutory appeal, the Indiana Court of Appeals is asked to examine several questions, at least one in the area of Procedure, and at least five in the area of Constitutional Law:

PROCEDURE

Does an individual waive his claim on appeal that a search was illegal when he does not first present that question to the trial court?

CONSTITUTIONAL LAW

Does a passenger who does not own the car in which he is stopped have standing to challenge a police search that uncovers drugs he owns?

If the passenger has standing to challenge a search, does he lose it when he lets the driver decide whether the car can be searched?

May police, after completing a traffic stop for speeding, then tell the driver a search of his car for drugs and weapons is “necessary” when nothing after the traffic stop gives the police reason to suspect the driver and passenger are committing a crime?

May police secretly record conversations between people who have been asked to wait in a police car during a search, when the individuals have not been given *Miranda* warnings that they have a right to remain silent?

Is a passenger “in custody” and therefore entitled to be advised of his right to consult a lawyer before deciding whether to consent to a search, when a police officer concludes a traffic stop but then tells the driver a search is “necessary” and asks the driver and passenger to stay in the police car as he searches their car?

*Sergio Campos v. State of Indiana***CASE SYNOPSIS****Facts and Procedural History**

Sergio Campos was charged with dealing in cocaine after police stopped and searched the car in which he was a passenger. Police stopped the car for speeding, and the officer told the driver he was issuing a warning ticket. He asked the driver to come with him to the police car while he wrote the ticket. The driver did so without objection. The officer thought the driver seemed nervous during the stop. The driver said the car belonged to Campos' brother Daniel but when the officer checked the registration he found it was registered under the name Jose Gonzalez. The officer asked what the purpose of the trip was, and the driver said he had been to a Chicago airport. The driver had trouble immediately recalling whether he had been to Midway or O'Hare, then said he had been to Midway.

The officer then went to get Campos' identification. He again asked the driver whether the car belonged to Campos' brother. The driver replied it did, and the officer asked, "Is it Jose Gonzalez?" The driver said, "Yes." Campos told the officer he and the driver had been to O'Hare. The officer then returned to the police car and asked the driver if he was sure they had been to Midway. The driver said he was.

Despite his suspicion based on the conflicting information, the officer gave the driver a warning ticket, returned his identification and paperwork, and told him "he was all set and to be careful in pulling out into traffic." The two shook hands and both began walking back

toward their respective vehicles.

The officer then asked the driver if he could search his car for illegal weapons or drugs. The driver asked "Is it necessary?" and the officer said "Yes." The driver said, "Okay," and the officer told him to sit in the police car. The officer asked Campos if there were illegal drugs or weapons in the car, and after Campos said no, the officer asked if he could search it. Campos told the officer he would have to ask the driver. The officer said the driver had already consented, and Campos replied, "Okay."

The officer told Campos to sit in the back seat of the police car. A recording device was operating in the police car while the driver and Campos were there, but the officer did not tell them their conversation was being recorded. Campos made damaging admissions while talking with the driver.

The officer opened the trunk, where he found cocaine. Campos moved to suppress all the evidence obtained through the search of the car and the statements he made while talking to the driver in the police car. The trial court denied his motion on the ground Campos did not have standing to challenge the search because he had no relationship to the owner of the car. Even if Campos had standing, the court held, he gave it up when he left it to the driver to decide whether to consent to the search.

Case Synopsis (*continued*)

The trial court also denied Campos' motion to suppress what Campos said to the driver while they were being recorded in the police car. The Court of Appeals accepted his interlocutory appeal.

Parties' Arguments

Standing

Under Article I, Section 11 of the Indiana Constitution, a defendant cannot successfully object to a search of someone else's premises if the search does not unlawfully invade his own privacy. So, for example, if the alleged illegal search and seizure did not involve the defendant's car, he will usually not have standing to challenge the illegality. To challenge a search and seizure under the Fourth Amendment to the United States Constitution, there is no "standing" requirement as such, but a defendant must have a legitimate expectation of privacy in the place where the property was found.

The State argues Campos does not have standing to challenge the police search because he didn't own or control the car that was searched. Nor did he automatically acquire standing because the items the police seized (*i.e.*, the drugs) were his. Campos points to evidence his brother owned the car, and argues that gives him enough "custody and control" of the car to provide standing.

If Campos ever had standing, the State says, he gave it up when he let the driver decide whether the car could be searched. Campos argues standing continues once that requirement is first met, and he could not lose standing just by agreeing with the driver's decision.

Continued Detention after the Traffic Stop was Finished

Campos argues it was wrong for the police to tell the driver a search of his car was "necessary" after the traffic stop was completed, because by that point the police officer had no reasonable suspicion to allow him to detain Campos. The State argues Campos waived this claim because he did not present it to the trial court before bringing this interlocutory appeal. Even if the claim was not waived, the State says the continued investigation was justified by the officer's suspicions before the traffic stop was concluded.

Secret Recording of Campos' Conversation

Campos argues his conversations while in the police car were wrongly recorded because he was in police custody but had never been given his *Miranda*

Opinion in this case expected:
By summer 2007

USI will be informed when the Court has issued an opinion in this case. Check the Court's website to read the opinion.

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

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Case Synopsis (*continued*) and Glossary of Terms

warnings that he had a right to remain silent. The State argues no warnings were necessary because Campos could not have expected his conversation with the driver while they were in the police car would have remained private.

GLOSSARY OF TERMS

U.S. Constitution, Fourth Amendment

This protects "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures"

Indiana Constitution, Article I, Section 11

Although its text is virtually identical to the Fourth Amendment to the U. S. Constitution, Indiana courts interpret this provision to provide some protections in addition to those of the Fourth Amendment. For example, the Indiana Constitution affords greater protections from police trash and car searches than does the Fourth Amendment.

Seizure

A seizure occurs when an officer's conduct would communicate to a reasonable person that the person was not free to decline the officer's requests or otherwise terminate the encounter.

Motion to Suppress

A request made by a defendant that the court not allow the State to use certain evidence against him at trial. It is usually based on an allegation the State obtained the evidence through an illegal or unconstitutional procedure such as a search or seizure. If the trial court grants the motion, the evidence cannot be used against the defendant. In drug possession cases, if a motion to suppress is successful, the State generally has no case against the defendant and drops the charges.

Interlocutory Appeal

An appeal that occurs during the course of a trial, before the trial court reaches a final decision. During the interlocutory appeal, the trial is placed on hold.

Terry stop

On seeing suspicious activity, police may perform a "Terry stop," and may temporarily detain people to ask that they identify themselves and to question them about the suspicious activity. The scope of a "Terry stop" is limited to investigation of the specific suspicious activity, and if the police detain people to question them about additional matters, the stop can turn into an "arrest." The name comes from the 1968 U.S. Supreme Court decision *Terry v. Ohio*.

Waive

To voluntarily give up something, including knowingly giving up a legal right such as a jury trial or a hearing on extradition (the transfer to another state's jurisdiction of one accused of a crime in the other state). One can waive his right to argue a particular issue on appeal by failing to raise the issue in the trial court.

Pirtle Advisement

Before a person in police custody can give a valid consent to a search he must be informed he has a right to consult with a lawyer. The name comes from the Indiana Supreme Court decision *Pirtle v. State*.

Standing

The ability of a party to demonstrate to the court sufficient connection to and harm from the action being challenged. For example, a person cannot challenge the constitutionality of a law unless he can demonstrate he is (or will be) harmed by the law. Otherwise, he "lacks standing" to bring the suit, and the court will dismiss the case.

Miranda warnings

In *Miranda v. Arizona*, the U.S. Supreme Court established that an arresting officer must advise a person being arrested of his rights to remain silent, to have an attorney present, and to have an attorney appointed if he is indigent. A reading of the *Miranda* rights usually includes a warning that anything said could be used as evidence. No statements made by an arrested person or evidence obtained therefrom may be introduced at trial unless the person was advised of or validly waived these rights.

TODAY'S PANEL OF JUDGES

Hon. Melissa S. May (Vanderburgh County), Presiding

- Judge of the Court of Appeals since April 1998

Melissa S. May was appointed to the Court of Appeals in April of 1998. Judge May was born in Elkhart, Indiana. She graduated from Indiana University-South Bend with a B.S. in 1980 and from Indiana University School of Law-Indianapolis with a J.D. in 1984.

Between law school and her appointment to the Court, Judge May practiced law in Evansville, Indiana, focusing on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, and as co-chair of the Futures Taskforce. In addition, she was a member of the Board of Directors of the Indiana Continuing Legal Education Forum from 1994-1999 and has been the co-chair of ICLEF's Indiana Trial Advocacy College from

2001 to 2005. She is a fellow of the Indiana Bar Foundation, as well as for the American Bar Association, and she is a Master Fellow of the Indianapolis Bar Association.

From 1999 till December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission. In 2003, Judge May was named to the American Bar Association's Standing Committee on Attorney Specialization. She is now special counsel to that committee.

In the spring of 2004, Judge May became adjunct faculty at Indiana University School of Law-Indianapolis, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana.

Judge May was retained on the Court of Appeals by election in 2000.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

Today's oral argument is the 181st case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Nancy H. Vaidik (Porter County)

- Judge of the Court of Appeals since January 2000

Nancy H. Vaidik was appointed to the Court by Governor Frank O'Bannon on January 19, 2000. She grew up in Portage, Indiana, and graduated from Valparaiso University with High Distinction in 1977 and from Valparaiso University School of Law in 1980.

Prior to her elevation to the appellate court, Judge Vaidik served as a trial court judge in Porter County for seven years. She began her legal career with the Porter County Prosecutor's Office, achieving the status of chief deputy prosecutor before joining the law firm of J.J. Stankiewicz and Associates.

Judge Vaidik is a former adjunct professor of law at Valparaiso University School of Law and is currently an adjunct professor of law at Indiana University School of Law in Bloomington. She teaches for the National Institute for Trial Advocacy and the College of Law of England and Wales. She is the former president of the Indiana Judge's Association and has received numerous awards, including the Indiana Domestic Violence Coalition Judge of the Year and the Paragon of Justice award from the BLSA and HLSA chapters at Valparaiso University School of Law.

Judge Vaidik, who was retained on the Court by election in 2002, is married and has two daughters.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.

TODAY'S PANEL OF JUDGES

Hon. Michael P. Barnes (St. Joseph County)

- Judge of the Court of Appeals since May 2000

Michael P. Barnes was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon on May 22, 2000. Judge Barnes received his B.A. from St. Ambrose College in Davenport, Iowa in 1970 and his J.D. from the University of Notre Dame Law School in 1973.

Judge Barnes was a Deputy Prosecuting Attorney and privately practiced law in South Bend from 1973 to 1978. In 1978 he was elected the St. Joseph County Prosecuting Attorney, a position he held for 20 years. During that tenure, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar

Association (1992-1993), National Board of Trial Advocacy (1995-1996), National Advisory Council on Violence Against Women (1997), Chairman of the Board of Regents, National College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations.

Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, and serves on the Board of Directors of the Friends of the St. Joseph County Juvenile Justice Center.

Judge Barnes was retained on the Court of Appeals by election in 2002. He is married and the father of two sons.

ATTORNEYS FOR THE PARTIES

For Appellant, Sergio Campos:

Kathleen M. Sweeney
Sweeney Law Group
Indianapolis

After thirteen years of public service including experience as a sex crimes and child abuse prosecutor, **Kathleen Sweeney** opened her own law practice in Indianapolis in 1998. A graduate of Indiana University School of Law-Bloomington and Saint Mary's College, Notre Dame, Ms. Sweeney is an employment law and criminal defense attorney who has represented clients in courtrooms throughout Indiana for over 20 years.

Ms. Sweeney has chosen to represent only individuals in employment cases and to defend, not prosecute, in criminal cases. She does not represent employers nor does she accept any contracts from the state or federal government.

In the employment law arena, Ms. Sweeney has successfully represented clients who were victimized and/or terminated because of race and age discrimination, disability discrimination,

sex harassment and whistle blowing. Ms. Sweeney has also represented clients charged with a gamut of crimes from RICO and bank fraud to murder in both state and federal courts. In recent years, she has obtained acquittals and dismissals for clients charged with murder, robbery and child molesting as class A felonies. She has also been successful in appealing cases that resulted in the Indiana courts finding laws unconstitutional as well as outright reversals based upon unlawful search and seizures.

Ms. Sweeney maintains active memberships with the Indianapolis and Indiana Bar Associations, the Indiana Public Defender's Council, the National Association of Criminal Defense Lawyers, the National Employment Lawyers Association, and Taxpayers Against Fraud.

For Appellee, State of Indiana:

Scott Barnhart
Deputy Attorney General
Indianapolis

Scott Barnhart was born in Evansville and grew up in Newburgh. Mr. Barnhart attended the Indiana University Kelley School of Business and received his B.S. with majors in Operations Management and Management. Following college, he spent a year working in the Americorps Service Program. As an Americorps Volunteer, his service primarily involved working with residents of a local housing authority and various educational programs for children.

Mr. Barnhart enrolled at the University of Toledo, College of Law. While attending law school, he served as a law clerk or legal intern for the Office of the Indiana Attorney General, the Wood County, Ohio, Prosecutor, and the Ohio Sixth District Court of Appeals. Mr. Barnhart graduated with Honors from the College of Law, passed the Indiana bar exam, and accepted a position as a Deputy Attorney General (DAG) in the appeals division. His primary responsibilities as a DAG include non-capital criminal appellate litigation in the Indiana Court of Appeals and the Indiana Supreme Court.